



Bargaining guide



#BridgeTheGap

How can this guide help me?

The gender pay gap reporting regulations now in force across most of the UK are an innovation that could leave a host of statistics sitting idly on employers' web pages. This guide is here to help ensure that, instead, they provide a fresh advance in tackling the entrenched injustice of gender pay inequality.

It helps branches understand exactly what requirements are placed on most organisations engaged in delivering public services to report certain key differences in the level of pay between the men and women they employ.

It provides advice about how to put pressure on employers to review their current policies, not only on pay, but also recruitment, training, carers' policies and many other areas that could help to close the gap.

It guides branches on how to broaden data collection to develop a fuller understanding of the issues causing a gender pay gap within the workforce, and then develop concrete policy changes that can help to bridge the gap.

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What does an employer have to report?

Key features and timescale

For private and voluntary sector organisations in England, Scotland and Wales, gender pay gap regulations derive from section 78 of the Equality Act 2010. The voluntary arrangements initially set out in that legislation were made a legal requirement by the [Equality Act \(Gender Pay Gap Information\) Regulations 2017](#) for organisations employing 250 or more staff.

The requirements were then extended to the public sector in England, Scotland and Wales, through the [Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#). The public authorities covered by the legislation are specified in schedule 2 of the regulations, with the major exclusions being those coming under devolved arrangements in Scotland and Wales.

All employers covered by the legislation with 250 or more staff now have to publish the following information annually:

- the difference in mean hourly pay between male and female employees;
- the difference in median hourly pay between male and female employees;
- the difference in mean bonus pay between male and female employees;
- the difference in median bonus pay of male and female employees;
- the proportion of male and female employees who receive bonus pay;
- the proportion of male and female employees in each quartile of the pay distribution.

For private and voluntary organisations, this information has to be collected for the “snapshot date” of 5 April each year and then reported within 12 months, ie 4 April the following year.

For public sector employers, the snapshot date is 31 March. Employers were given up to a year following that date to publish the required figures in 2018 and are then required to publish at intervals not greater than a year from their initial publication date.

The information has to be published on the employer’s own website and uploaded to the government gender pay gap website, where it is available here: <https://gender-pay-gap.service.gov.uk/>. The report must remain on an employer’s website for a minimum of three years.

There is no mandatory requirement to publish a narrative to accompany the figures that explains the reasons behind any gap or what the organisation intends to do in order to close the gap. However, ACAS, the Government Equalities Office and the Chartered Institute of Personnel and Development (CIPD) all recommend such a narrative.

Details of the calculations

In calculating these figures, the regulations specify the following definitions.

- The pay figures used must relate to “full-pay relevant employees.” Therefore, any staff who are on a reduced rate for any reason on the snapshot date are not included. Reduced rates of pay may be due to staff reverting to the various forms of payment for working parents (maternity, paternity, adoption, parental or shared

parental leave pay), sick pay or some form of alteration under special leave, such as during compassionate leave or unpaid sabbaticals.

- Hourly pay covers “ordinary pay” and “bonus pay.” Ordinary pay covers basic pay, allowances, and shift premiums, but not overtime, payments related to redundancy, in lieu of leave or non-monetary remuneration. Bonus pay can come in the form of money, vouchers or securities and relate to profit sharing, productivity, performance, incentive or commission, but it does not cover any remuneration related to overtime or redundancy.
- The relevant pay period for calculation of hourly pay is the average over the usual pay period for basic pay that includes the snapshot date. The relevant pay period for calculation of bonus pay is the 12 months preceding the snapshot date.
- The pay figure is before any deductions such as income tax, National Insurance or employee pension contributions.
- The employees covered by the regulations encompass all those under a contract of employment, a contract of apprenticeship or a contract personally to do work. Therefore, apprentices and zero hours workers are part of the calculation, but agency workers are generally included in the reporting of the agency themselves rather than the organisation to which an agency sends a worker.

Differences in both hourly pay and bonus pay are calculated with both a mean and a median average.

- The **mean** is calculated by adding up total pay and dividing by the number of employees.
- The **median** is calculated by arranging the pay of all employees in order from the highest paid to the lowest paid and picking out the pay of the individual at the mid-point. For example, if there are 1,001 employees, the pay of the 501st in the list represents the median as there are 500 employees paid less and 500 paid more.

Both methods have pros and cons as estimates of the average. The median is less affected by a few extremely high or extremely low-paid employees (commonly referred to by statisticians as “outliers”). Therefore, the median can be regarded as the most typical pay gap in the organisation. However, it can also be argued that the mean takes better account of the full range of values and, unless there is a good reason to ignore “outliers,” it provides a more accurate estimate of the average gap. Frequently, the highest paid “outliers” will be men filling the organisation’s most senior positions.

Calculation of the proportion of male and female employees in each quartile of the pay distribution involves arranging all employees in order of pay and separating them into the lowest paid quarter, lower middle paid quarter, higher middle paid quarter and highest paid quarter. The proportion of each quarter that is male and female is then calculated to see the imbalance, providing a particularly useful figure for understanding the composition of the lowest paid quarter and how composition changes with each step up the pay scale.

Further details of the calculations are set out in the regulations, available on these links:

[Equality Act \(Gender Pay Gap Information\) Regulations 2017](#)

[Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#)

Applicability of threshold

The threshold of 250 staff for the publication requirement to apply is based on headcount rather than full-time equivalents. This figure encompasses all employees and not just the “relevant employees” used in the gender pay gap calculation.

The publication requirement falls on organisations as separate legal entities. For example, an organisation that splits its business across several limited companies that employ 250 or more staff would have to report the gender pay gap for each company. The figure would only have to be published for the group of companies as a whole if the group exists as a separate legal entity and employs the required number of staff.

Recourse for enforcement

The explanatory memorandum states that the Equality and Human Rights Commission (EHRC) is the body charged with enforcing the legal requirement on organisations across Britain to publish the gender pay gap data in the prescribed timescales.

Where correspondence with non-compliant employers does not achieve a resolution, the commission is committed to carrying out an investigation which may then lead on to the issuing of an unlawful act notice giving the employer 14 days to prepare a draft action plan.

The full details of EHRC enforcement procedures are set out here:

<https://www.equalityhumanrights.com/sites/default/files/gender-pay-gap-enforcing-the-regulations-march-2018.pdf>

Relationship to equality duties and devolved arrangements

For public sector bodies, the requirement to publish pay gap information builds on the existing Public Sector Equality Duty. This general duty applies equally across Britain, but is underpinned by a number of specific duties which vary across England, Scotland and Wales. The general duty requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people from different groups;
- Foster good relations between people from different groups.

In England, each listed public body with more than 150 employees must publish information to demonstrate compliance with the duty annually. Every four years since 2012, an authority is also required to publish one or more objectives that it thinks it should achieve to eliminate discrimination, advance equality of opportunity, or foster good relations.

In Wales, devolved public authorities defined in part 2, schedule 19 of the Equality Act cover most local government, health, university, college, school and police authorities within the country. These authorities stand outside of the general pay gap reporting regulations, but are subject to the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, which require authorities with over 150 employees to:

- Publish equality objectives to meet the general duty at least every four years;

- Assess the impact of proposed policies and practices on meeting the general duty;
- Collect and publish annual data on the number of employees by protected characteristic;
- Publish an equality objective to address any gender pay difference;
- Draw up a strategic equality plan and provide an annual report.

The requirement on gender has been further fleshed out to specify that an authority should publish annual data on:

- Numbers employed on 31 March each year broken down by job, grade, pay, contract type and working pattern;
- Numbers who have applied for jobs with the authority over the last year;
- Numbers who have applied to change position within the authority, identifying how many were successful in their application and how many were not;
- Numbers who have applied for training and how many succeeded in their application;
- Numbers who completed the training;
- Numbers involved in grievance procedures either as complainant or as a person against whom a complaint was made;
- Numbers subject to disciplinary procedures;
- Numbers who have left an authority's employment.

In Scotland, devolved public authorities defined in [part 3, schedule 19 of the Equality Act](#) cover most local government, health, university, college, school and police authorities within the country. These authorities stand outside of the general pay gap reporting regulations, but are subject to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, which require authorities to:

- Assess and review policies and practices in light of the general equality duty;
- Gather and use employee information to advance the general equality duty;
- Consider award criteria and conditions in relation to procurement;
- Publish a report on mainstreaming the general equality duty, equality outcomes, gender pay gap information and a statement on occupational segregation that is updated every two years;

The requirement on gender has been further fleshed out to specify that an authority with more than 20 employees should publish data on:

- The percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime).
- Occupational segregation in terms of the concentration of men and women in particular grades and occupations. This segregation refers to vertical occupational segregation (the difference in the proportion of women fulfilling junior roles as opposed to senior roles) and horizontal occupational segregation (where certain genders may predominate in stereotypical jobs or occupational sectors).

In Northern Ireland, equality duties are enshrined in the Northern Ireland Act 1998 and the Disability Discrimination Act 1995. Section 75 of the Northern Ireland Act 1998 places a statutory obligation on public authorities in carrying out their various functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between men and women.

The broad requirements of Britain's pay gap reporting legislation are envisaged to form part of the [Employment Act \(Northern Ireland\) 2016](#), but the absence of a Northern Ireland Executive means that this legislation has not yet come into effect.

Care over data protection

In general, gender pay gap data and the supplementary measures recommended in this guide are presented in a form that avoids any disclosure of personal data that would bring it under the remit of the General Data Protection Regulations (GDPR).

However, particularly in the case of small organisations, care should be taken if the numbers reported as part of any measure become so small that they can lead to the identification of individuals. To avoid such a scenario, it may be useful to recommend following the Civil Service protocol of suppressing any data based on five or fewer responses as a way of protecting confidentiality.

Checklist 1

- Even if an organisation is not strictly covered by the legislation, such as where the number of employees does not meet the threshold, press the employer to publish gender gap data as an exercise in best practice.
- Signpost the advice from ACAS, the Government Equalities Office and the Chartered Institute of Personnel and Development that the raw figures should be accompanied by a narrative that explains gaps and draws up an action plan that contain specific, time-limited targets for addressing gaps. Otherwise, the exercise can amount to little more than a data gathering exercise without purpose.
- Equality duty objectives can be linked to pay gap reporting, but it may be preferable to keep objectives separate to maximise the number of equality initiatives pursued by the organisation.
- In pressing for a narrative that defines an action plan, emphasise the benefits to an employer:
 - Reducing the chances of facing equal pay claims, with the associated costs and possible damage to reputation;
 - Drawing more effectively on the full talents of the entire workforce;
 - Generating a more diverse workforce that's more attuned to the needs of all service users;
 - Attracting and holding on to the best candidates for fulfilling roles in the organisation (an EHRC survey found that nearly two-thirds (61%) of women would take an organisation's gender pay gap into consideration when applying for jobs).
 - Developing a more productive, loyal and motivated workforce, with all the consequent benefits for reducing staff turnover and absenteeism;

What do we do with gender pay gap data once it's published?

Compare against national, local or sector averages

Any gap that indicates women are paid less than men is a cause for concern, but it is easier to put pressure on the employer to take action when you can demonstrate that the broad figures are worse than the averages across the UK, the region or the sector.

The figures reported by public authorities across local government, police forces, the NHS, universities and FE / sixth form colleges are set out in UNISON's spreadsheet [available here](#), or can be viewed directly by searching <https://gender-pay-gap.service.gov.uk/>

These can be compared against national averages, since the average results across all the organisations that reported over 2020/21 were as follows.

Mean hourly pay gap	14.1%	Median hourly pay gap ¹	12.7%
Mean bonus pay gap	19.8%	Median bonus pay gap	3.2%
Proportion of male employees who receive bonus pay	36.7%	Proportion of female employees who receive bonus pay	35.5%
Proportion of female employees in each quartile of the pay distribution			
Lowest quartile	54.7%	Upper middle quartile	45.7%
Lower middle quartile	50.1%	Highest quartile	40.1%

However, the more striking comparison for influencing employers is probably against other local public authorities or against the relevant sector average.

Unfortunately, the government's pay gap website does not provide a breakdown by region, so searching against the name of other major public authorities in your area is probably the best way of obtaining local data from the government site: <https://gender-pay-gap.service.gov.uk/>

This UNISON spreadsheet provides the sector averages and shows any public authority result below that average in red:

<https://www.unison.org.uk/gender-pay-gap-data-by-sector-2021-v2/>

Gender pay gaps by occupation are published here:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2020#gender-pay-gap-data>

However, these figures are not as comparable as the national, regional and sectoral data pinpointed above, since they are based on Office for National Statistics Annual Survey of Hours and Earnings data, which is liable to show a larger gap because the figures include the multitude of small employers that are not included in gender pay gap reporting.

¹ The extent to which smaller organisations inflate the median hourly pay gap may be a major factor in the way the median hourly pay gap figure collected through gender pay gap reporting contrasts with the last Annual Survey of Hours and Earnings figure, which put the gap at 15.5%.

Seek greater detail in pay gap analysis to identify causes

The broad gender pay gap data required by law can provide a pointer to whether an organisation has a particularly large gap, whether bonus payments make a particularly large contribution and to what extent women may be stuck at the bottom of the pay scale.

However, in order to gain a better indication of the possible causes creating a gap and therefore develop appropriate actions, a more detailed breakdown of gender pay is often useful.

The section below sets out three of the most high-profile causes and the data that help in identifying them.

Pay gaps can be caused simply by paying women less than men for doing work of equal value, in contravention of the Equal Pay Act.

Almost 50 years on from establishment of equal pay legislation, court cases still abound that reveal thousands of women being paid less than men for the same work or work that is different but of the same value.

Because of the need to look at equivalent work, gender pay gap data for specific occupations and pay bands is liable to provide the best indicator of whether this could be the cause of a pay gap.

The Equality and Human Rights Commission recommends that pay variances of 5% or more within any equal work grouping or pattern of differences of 3% across equal work groupings should be investigated.

Pay gaps can be caused by the effect of men staying in the full-time workforce for longer than women and so progressing up the pay scale further.

TUC research has found that women working full-time earn less than men annually at every stage of their careers from as soon as they turn 18, but the gap increases steadily throughout their working life.

At age 18-21 the gap is £1,845, it then rises to £2,305 between 23 and 29, but then leaps to £7,400 by the age of 40 and £8,421 at 50.

A strong contributing factor to this pattern is women stepping out of the labour force to have children and the tendency for women to take on the caring roles for family members, which extends their absence. On return to work, women frequently have to take on part time work to balance with caring responsibilities, which are often low-skill, low-paid jobs with little opportunity for progression.

This pattern has been confirmed by Office for National Statistics findings that 74% of women with dependent children are employed compared to 92% of men, while over 50% of female employment is part time compared to 90% of men in full time work.

In addition, 29% of women report that returning to work after having a child is not financially viable. Research carried out by the TUC found that one in 12 women took a pay cut when returning to work after maternity leave. The hourly wages of women who return to paid work after maternity leave decrease, on average, 2% for each year that they have not been in employment.

Pointers to whether this factor is a strong contributor to a pay gap are liable to be picked up to some extent by the reporting requirements on the proportion of women in each pay quartile. However, it can be supplemented by seeking data on the pay gap by age, the proportion of women by contract type (eg full time, part time, temporary, zero hours), as well as the proportion of women who return to work after taking time out for pregnancy or adoption and the proportion who remain after more than a year.

Pay gaps can be caused by other forms of discrimination in recruitment, training and progression that, though not resulting in men being paid more than women for work of equal value, does result in more men filling higher paid roles.

A survey by the Chartered Management Institute in 2017 found that four in five UK managers had witnessed some form of gender discrimination or bias at work in the previous 12 months and 50% of those pointed to gender bias in recruitment / promotion decisions.

Research by the Equality and Human Rights Commission found that one fifth of women experience harassment or negative comments relating to their pregnancy, and one in nine mothers are dismissed, made compulsorily redundant or treated so unfavourably that they feel compelled to resign.

Pointers to whether discrimination in recruitment, training and progression are a strong contributor to a pay gap can be drawn from data on the proportion of women among job applicants, the proportion among successful applicants, the proportion of women receiving training, and the proportion of women reporting bullying or harassment.

Reviewing your standard recruitment materials is a good step in eliminating some artificial barriers to women applying for and succeeding in recruitment initiatives.

Recent research has found that the language used in recruitment material can be a significant barrier or incentive for women.

Utilising the best elements of differing requirements placed on employers across England Scotland and Wales can assist in obtaining the fullest possible picture of how policies impact on the gender pay gap.

For instance, branches in Scotland and Wales may find it useful to advocate publication of the core measures demanded by the gender pay gap reporting regulations among devolved public sector organisations.

However, the more detailed requirements within Scotland for displaying the proportion of women by occupation and pay grade can be advocated in England as a supplement to general pay gap data by quartile.

Equally, the requirements set out above for public bodies in Wales is more prescriptive than anywhere else in the UK for understanding the proportion of women by contract type, job applicants, and representation in disciplinary / grievance procedures.

Checklist 2

- Emphasise to the employer that in order to identify causes and develop a suitable action plan, greater detail is needed than that required by the gender pay gap reporting regulations alone.
- To obtain a better indication of whether workers are not being paid equally for work of equal value, seek the following data:
 - The gender pay gap by occupation
 - The gender pay gap by pay band.
- To obtain a better indication of whether policies make it difficult for women to share caring responsibilities, retain employment while balancing work against caring responsibilities and return to full time work, seek the following data:
 - The gender pay gap by age;
 - The proportion of women by contract type (eg full time, part time, temporary, zero hours);
 - The proportion of women who return to work after taking time out for pregnancy or adoption;
 - The proportion who remain employed after a year.
- To obtain a better indication of whether other forms of discrimination in recruitment, training and progression are contributing to the gap, seek a gender breakdown of data on
 - The proportion of women among job applicants and successful applicants;
 - The proportion of women participating in training;
 - The proportion of women reporting bullying or harassment;
 - Exit interview data on the reasons why men and women leave the organisation.
- Propose a joint employer / union working group to take forward identification of gender pay gap causes and actions, with senior management involvement to ensure the group's conclusions carry sufficient weight in the organisation. A suggested letter to the employer for this purpose is set out in Appendix 1 to this guide.

What actions are needed to address gender pay gaps?

Once the organisation has developed the most comprehensive picture that it can of the gender pay gap, the data may point to certain factors making a particularly major contribution to the scale of the gap.

The following sections set out the possible actions that are most relevant to the causes identified. However, all organisations would benefit from taking the following steps, which run throughout the sections below.

1. Ensuring an equality proof pay and reward structure
2. Reviewing recruitment materials and processes
3. Reviewing access to training and development
4. Reviewing flexible working policies / practices
5. Reviewing policies for carers

Addressing equal pay for work of equal value

The Equal Pay Act requires equal pay rates for:

- Like work – meaning the same or broadly similar work, where differences are of no practical importance;
- Work related as equivalent – meaning that the work is different, but it is rated as being of equal value under the same job evaluation scheme;
- Work of equal value – meaning that the work is different, but it is of equal value in terms of factors such as effort, skill and decision making².

Differences in pay can only be justified in these cases if there is a “material reason” which does not discriminate on the basis of gender. The scale of the difference also has to be a proportionate means of achieving a legitimate aim.

Depending on the particular scenario and accompanying facts, material factors might include differences in the qualifications held by employees, seniority, geographical reasons or responses to a skills shortage. However, the factor would be considered to discriminate on gender if, for example, a “market forces” argument was based on widespread discrimination across a sector.

An equal pay audit is a very effective way for an organisation to drill down to the level of detail needed to establish whether pay arrangements are violating the Equal Pay Act. In conducting such audits, the union should be involved throughout the process.

² The Equality and Human Rights Commission’s Equal Pay Statutory Code of Practice carries examples of all these forms of equal pay at <https://www.equalityhumanrights.com/sites/default/files/equalpaycode.pdf>

Pay structures that utilise job evaluation

Most major public sector organisations have adopted job evaluation procedures that rate jobs according to their demands and difficulty as a measure of “value” so that they can then be allocated against national or local pay scales.

These job evaluation procedures have been designed to reduce the occurrence of unjustifiable inequalities, but they do not make pay scales immune to equal pay issues.

In these cases, equal pay audits offer a valuable tool to review job evaluation procedures and ensure that inequality has not crept into pay systems.

Branches should seek to ensure that audits address the following points:

- The choice of job factors and their weighting does not exclude or undervalue factors that serve to drive down the evaluation score of roles that are most commonly filled by women;
- Factors based on experience should generally avoid being defined in terms of continuous service;
- Any recruitment and retention supplement that increases a gender pay gap has to be based on firm, up-to-date evidence of recruitment difficulties for a specific occupation;
- The number of pay points through which an employee must progress to reach the top of their pay band must be based on an accurate assessment of the time necessary to develop the skills and expertise to fully discharge the requirements of a job. Unreasonably long pay scales can leave women short of the top when they take time out because of pregnancy or caring responsibilities. Bands should not usually exceed four or five points and the same number of points should apply consistently across each band;
- Care should be taken to avoid excessively broad bands as such arrangements can place widely rated jobs within the same pay scale, while overlapping bands also add to risks;
- Changes to jobs have been adequately reflected through the job evaluation process;
- The scale and duration of any pay protection arrangements can be justified as reasonable in cushioning staff during the transition to a new pay policy;
- Policies that define access to bonus earnings, higher paid shift work and overtime provide seek the maximum consistency all staff;
- Elements of pay based on reaching a competence standard should seek equality in access to opportunities for developing the required level of competence. For example, the timing and location of any training should accommodate part-time employees who may have caring responsibilities or those on maternity leave;
- Elements of pay based on performance should utilise criteria that are clearly defined and achievable, with targets consistently applied across all departments. Measurable, and objective criteria can help avoid bias;

- Organisations should maximise the consistency and fairness of bonus payments by targeting a single bonus scheme rather than allowing a multitude of schemes to apply across different occupations;
- Consistency and fairness are also generally advanced by limiting local managerial discretion over elements of the pay package. Where managers do have discretion, they need thorough training in ensuring equality and their decisions need careful central monitoring;
- Bonus payments and performance pay should not reward compliance with a long hours culture that discriminates against workers who carry primary caring responsibilities;
- A single respected job evaluation scheme should be applied across all roles. [In local government, the NJC and SJC job evaluation schemes are recommended by the joint committees. In the NHS, Agenda for Change roles are covered by the NHS Job Evaluation Scheme]

In local government, [UNISON's Keeping Pay Equal: Trade Union Side Guide to Local Government Pay and Grading Reviews](#) offers further sector specific guidance on many of these issues.

In the NHS, the equal pay toolkit offers a recommended path for conducting an audit at <http://www.nhsemployers.org/your-workforce/plan/diversity-and-inclusion/tools-and-resources/external-resources/nhs-equal-pay-toolkit>

For college staff, [UNISON guidance](#) recommends the EHRC five step process for audit <https://www.equalityhumanrights.com/en/multipage-guide/equal-pay-audit-larger-organisations>

Pay structures that don't utilise job evaluation

Private and community / voluntary organisations engaged in delivering public services are much more likely than the public sector to have pay systems that are not based on job evaluation systems. For that reason, they are much more vulnerable to violating equal pay legislation.

Pay structures in these organisations can take a wide variety of forms but are often based on “spot rates” or pay ranges that vary for each individual and are influenced by estimates of changes in “market rates.”

Equal pay audits are even more vital for these pay systems to address suspected Equal Pay Act violations and much of the checklist above remains valid, particularly in relation to pressing for checks on the effects of supplements to basic pay.

A credible pay audit should utilise a respected source to check against market rates where an organisation is trying to justify differentials on this basis. However, UNISON has access to pay benchmark data on pay rates for generic occupation types across the economy, so if you have reason to doubt the figures used as part of an audit, Bargaining Support may be able to assist on bsq@unison.co.uk.

In the longer term, branches should make the case to such employers that a pay scale structured around job evaluation is the fairest system that offers the greatest protection for the employer against equal pay claims.

However, if it is not possible to achieve full job evaluation, the EHRC recommends that pay systems are at least remodelled to meet the following requirements:

- Transparency – so that all understand the pay and benefits system and, in particular, employees can understand how each element of their pay packet contributes to their total earnings;
- Simplicity – different systems for different staff tend to reduce transparency and increase the risk of unequal pay;
- Responsiveness to change – any significant change to pay systems should be subject to an equality impact assessment.

Pursuing an equal pay case

Investigation and resolution of equal pay should be pursued jointly with the employer whenever possible, but failure to agree a satisfactory solution should lead the branch to consult with the region over whether there are sufficient grounds to pursue a legal case.

An equal pay case has to be built around a concrete comparison of Person A's pay against Person B (who is of the opposite gender) and is employed:

- By the same or an associated employer at the same establishment or workplace, or
- By the same or an associated employer at a different establishment or workplace, provided that common terms and conditions apply either generally between employees or as between Person A and Person B ("the comparator").

An associated employer means an organisation over which another organisation has control, or organisation over which a third party has control (for example, the employer's parent organisation).

The definition of establishment is not restricted to a single physical location. For example, a woman may claim equal pay with a man doing equal work employed by the same council but working in a different geographic location.

A woman care assistant can compare herself to a man employed by a different health authority where the difference in their pay is due to terms and conditions set by a national scheme and can be remedied by a national negotiating body.

The possible defences that an employer may raise in response to an equal pay claim are that:

- Person A and the comparator are not doing equal work;
- The chosen comparator is not one allowed by law (for example, Person B is not in the same employment);
- The difference in pay is genuinely due to a material factor, which is not related to the sex of the jobholders.

Tribunal applications must be lodged within six months less one day of the termination of any contract of employment. There are factors which can affect this time limitation, and thus if you are uncertain about the timeframe to bring a claim, you should seek appropriate assistance as soon as possible

Breach of contract claims can also be brought in a civil court within six years (five years in Scotland) from the last day that any inequality in pay occurred in a particular contract.

The two remedies available to a tribunal in an equal pay case are declaration and / or entitlement to arrears:

- In the case of declaration, the tribunal states the rights of the claimant and/or their employer in relation to the claim brought. For example, a pay rise to the level of the comparator's pay or the inclusion of any beneficial term not in the claimant's contract, and order the employer to pay arrears of pay or damages to the person who has brought the claim.
- In the case of entitlement to arrears, a successful claimant is entitled to an equality clause inserted into their contract of employment to ensure that they get the same

pay as their comparator, as well as back pay to the date of the insertion of the equality clause into their contract, up to a maximum of six years (five years in Scotland) before the date of lodging the Tribunal application.

Compensation to rectify non-economic loss, such as the case of injury to feelings for example, is not awarded by equal pay cases.

In England, Scotland and Wales, but not Northern Ireland, the Equality Act specifies that any pay secrecy clause in an employment contract is overridden if there is reason to suspect inequality of pay on gender grounds.

Checklist 3

- Press for an equal pay audit to identify whether women are being paid differently for work of equal value, investigate how the pay system contributes to any such gap and whether any “material factors” can justify a gap.
- Utilise the listing above to ensure that the audit comprehensively assesses the pay structure features that frequently create a pay gap.
- Press any employer not utilising job evaluation in its pay structure to adopt such a system, highlighting the risks that they run of equal pay claims without such an assurance.
- Consider seeking agreement to hold a regular pay audit at specified intervals to ensure that discrimination does not creep in.

Addressing discriminatory policies in recruitment, training and progression

If the data collected through gender pay gap reporting and supplementary measures points to a large proportion of women being stuck at the bottom end of the pay scale, and a mismatch between genders in applying for roles, succeeding in interviews and take-up of training, then the following steps should be considered.

Measures to encourage more women to apply for vacancies

Research from Ofsted has shown that from an early age and throughout school, girls and boys are socialised to have conventionally stereotypical and limiting views about jobs for men and women. And the Equality and Human Rights Commission's *Fair opportunities for all* report gives multiple sources of evidence for its assertion that "girls do not get the same range of choices over potential professions as boys".

The basis for a gender pay gap in the working population is therefore established early. It continues into teenage years, according to research among teenagers by the London School of Economics (LSE). This revealed that "girls born in 2000 are aspiring to do jobs that are paid 31 per cent lower than males."³ It also, worryingly, calculated that the difference in aspiration of these boys and girls could result "in the possibility that the gender pay gap could actually become larger than it is at present."

Although this segregation is partly to do with early influences, there are also factors that trade unions can positively influence when on the bargaining agenda.

There is some evidence that women are less likely than men to aspire to senior and leadership roles, though the true reason for this is not clear. It is a potentially controversial issue, as it can be used to put the lack of women in senior positions down to their own lack of desire for them, while many would argue that a more important contributor to the problem is stereotyping of women.

However, given the evidence suggests that women holding themselves back is a potential contributing factor to the gender pay gap, it is important to consider ways to tackle it.

The following measures are recommended to encourage women to seek career progression within your organisation:

- Review current recruitment materials to ensure they are not gendered / off-putting for women (see section below on reducing bias in recruitment and selection);
- Review training policies to encourage take-up by women (see section below on training);
- Consider introducing programmes bringing together women who aim to apply for promotion in the next two years, and providing them with help to prepare their CVs and prepare for interviews;
- Mentoring programmes, where mentors provide guidance and advice to their mentee;
- Set up "internal head hunting" teams to seek out potential women leaders, with union involvement (ensuring that no women aspiring to senior roles are left out).

Measures to reduce recruitment and selection bias

Selection processes can have an immense impact on the proportion of women filling relatively highly paid roles.

The Equality and Human Rights Commission (EHRC) has made clear that discrimination and bias can play “a significant role” in gender (as well as ethnicity and disability) pay gaps.

In its strategy document *Fair opportunities for all*, it states: “Employers are often influenced by the personal characteristics of individuals when deciding on recruitment, promotion and pay rewards, rather than basing their decisions on individuals’ experience and skills.”

Therefore, we would recommend that you press for a review of all recruitment and selection materials and processes that pays particular attention to the following factors:

- Checking for language used in recruitment materials that have been shown to be subconsciously more off-putting for women – use ‘create’ rather than ‘build’, ‘develop’ rather than ‘manage’ – there are some emerging on-line tools that can review the text used in job adverts and determine whether you are probably looking for a man or a woman to fill the role.
- Reviewing the ‘essential’ vs ‘desirable’ criteria – is it really ‘essential’? Recent research has shown that women will generally only apply for a job if they meet 100% of the stated criteria while men will apply even if they only meet 60% of the stated requirements.
- Review the structure of interview panels to ensure that gender balance is always targeted in the composition of the panel and members are all equality trained.
- Consider the conduct of interviews to ensure a structured format is adopted that asks exactly the same questions of all candidates in a predetermined order and format, as well as grading the responses using pre-specified, standardised criteria.
- Make promotion, pay and reward processes transparent. This means employees are clear what is involved and managers know that their decisions must be objective and evidence-based because they can be reviewed by others;
- Checking where and how advertisements are placed, particularly to ensure that they are not reaching a predominantly male audience for higher paid roles and a predominantly female audience for lower paid roles.
- Making sure that advertisements proudly display the employer’s commitment to flexibility and equality.
- Assessing job titles used in advertisements to ensure that they do not reflect assumptions that undervalue work performed predominantly by women, or overvalue work performed predominantly by men. The Equality and Human Rights Commission gives the examples below of this tendency.

Male job title	Female job title
Technician	Operator
Office manager	Office supervisor
Tailor	Seamstress
Personal assistant	Secretary
Administrator	Secretary
Chef	Cook

Measures to encourage women to take up apprenticeships

- Where you have apprenticeship schemes, offer apprenticeships in part-time and flexible working roles as well as full time.
- Undertake outreach activities to specifically attract women applicants, for example working with schools and colleges, running taster days and holding promotional events.
- Explicitly welcome female applicants in advertisements and produce marketing material that challenges stereotypes.
- Remove formal academic entry requirements unless strictly necessary for the role.

Measures to reduce bias in training take-up

Low-paid staff on part-time or insecure forms of contract are the group of workers that are least likely to be offered training and development opportunities in the workplace.

Given the tendency of women to predominate among this group, training policies can have a substantial impact on their ability to progress up the pay scale.

Therefore, press for a review of training practices that pays particular attention to the following factors:

- What training is offered to staff by contract types, grades and occupations, with a view to widening the range available to women that would help them move up the pay scale.
- The accessibility of training, with a view to adjusting the timing, duration, format and location of training to enable greater participation by staff who do not work a typical full time pattern.
- Consider leadership development training aimed at women.
- Consider reserved women's places on all training courses.

Measures to address the impact of caring roles on pay

If the data collected through gender pay gap reporting and supplementary measures points to a large proportion of women being stuck at the bottom end of the pay scale, a ballooning pay gap with age and a poor record in retaining women who take maternity leave, this should be a cue to examining the policies that impact most heavily on retaining women in the workforce and the terms on which they maintain employment.

A recent survey of 10,000 employees carried out by the Business in the Community (BITC) charity showed that women are eight times more likely to take the primary role in caring for children and are one and a half times more likely to take the lead in caring for adults.

As a result, women are more likely than men to change their work schedule, change their role or change their line of work, to help balance their work and caring responsibilities. Twice as many women say they stopped working altogether to help to balance work and care responsibilities

UNISON research has highlighted the importance of a good carers policy in supporting women to stay in, and crucially to progress, in work.

Press for a review of, or negotiate to establish, a carers policy which recognises both child care responsibilities and caring for adults.

In addition to a good flexible working policy (see separate section on flexible working policies), specific support for carers can include:

- Introducing paid carers leave that can be taken in single or even half days;
- Introducing a policy for taking agreed periods of unpaid leave to facilitate sudden caring needs whilst keeping a job open to return to;
- Recognition that caring responsibilities sometimes require flexibility but may also require access to rigid, inflexible, work patterns so staff can plan around rigid caring responsibilities;
- Assessing all training offers to ensure all staff are able to participate equally, including those with caring responsibilities

The carers' scheme can be supplemented by consideration of how the employer supports ongoing child care. The charity Working Families highlights the following options:

- A subsidised workplace nursery, making childcare both affordable and (for those who live locally) more convenient;
- Childcare vouchers or a childcare subsidy/allowance through payroll;
- Local childcare deals, through partnerships with local providers;
- Information on local childcare provision

UNISON sets out its guidance on bargaining over carers' policies and a model policy at <https://www.unison.org.uk/content/uploads/2018/06/Carers-policies-guide.pdf>

Measures that encourage and support men to take on caring roles

Recent research has shown that many men feel that line managers do not recognise or accommodate their caring responsibilities on a par with female employees.

Shared parental leave is a relatively new initiative that enables partners (predominantly men) to take time off to help with caring responsibilities in the first 12 months after a child is born.

Up to 50 weeks of maternity leave and 37 weeks of maternity pay can be converted into shared parental leave and pay with a mother's partner.

Various pieces of research suggest that the main barriers for men taking up shared parental leave are:

- Poor remuneration;
- The fear that it would impede their career;
- The fact that any leave the father takes reduces that available to the mother.

Just as in the case of maternity schemes, enhanced rates of pay are possibly the most decisive factor in improving the uptake of shared parental leave.

However, with surveys suggesting that around just 2% of eligible couples are taking advantage of the scheme, it's also apparent that employers need to make a concerted effort to highlight the option available to men.

A publicity programme might include:

- Materials informing future fathers that it's their legal right to request shared parental leave;
- Provision of guidance and personal support to understand the scheme;
- Sharing any of examples of senior figures within the organisation who have taken shared parental leave.

Additional measures to support the take up of caring responsibilities of male employees could include;

- Ensuring line managers reflect the employer's policies on family-friendly working, particularly for men, and provide them with suitable training;
- Showcase positive male role models and stories of how family-friendly policies have helped balance work and care roles;
- Measure and monitor data on the use of family-friendly policies and compare it with career progression data (to ensure there are no negative effects, and that is then transmitted to staff)
- Provide enhanced shared parental pay and make such schemes more flexible in operation

Measures that encourage women to remain in employment during / after pregnancy

A review of the terms on which an organisation offers maternity pay and leave is a crucial consideration for encouraging women to remain in employment during and after pregnancy.

UNISON's full guidance on bargaining for working parents is set out at <https://www.unison.org.uk/content/uploads/2017/03/Working-parents.pdf>.

However, the main dimensions of a scheme that are open to improvement as a way of improving the package on offer are as follows:

- Across the public sector, the most common pay arrangements over the 52 weeks of leave are six weeks on full pay, 12 weeks at half pay, 21 weeks on statutory pay and 13 weeks unpaid. Terms should at least match the average for the relevant sector, but examples of better terms achieved are also set out in the guide as a possible target;
- Unpaid parental leave of 18 weeks is a statutory requirement for each child up to the age of 18, but seek some level of payment for at least part of the period. Again, the guide shows examples of deals that have been achieved;
- The qualifying period for maternity pay is frequently a year, but seek to push the period down to 26 weeks, in line with some of the better public sector arrangements;
- Seek the maximum 10 Keep in Touch Days to be permitted as part of maternity leave, which allow a woman to return for work or training on a paid basis without losing maternity pay or bringing leave to an end;
- Press for the organisation to avoid common punitive policies such as loss of maternity pay if a woman fails to return for a specified period and instead target better practice adopted by some organisations that offer a bonus after a specified period back at work;
- Women can be provided with greater flexibility in making an early return to work by waiving at least part of the eight week notice commonly specified and putting in place options for phased return;
- Build on the health and safety duty for breast feeding mothers to have suitable facilities for rest by requiring access to a private room with a secure clean fridge and paid time off to express milk or breastfeed.

Measures to build flexible working into the full range of jobs

Flexible working options provide staff with a way of combining their work with caring responsibilities.

Some of the most common forms are set out in the table below.

Flexi-time	Employees' weekly hours may be set and they may have to work within 'core hours' depending on the business needs, however they have some flexibility in how they work their hours.
Part-time working	Employees may decide to request working shorter or fewer days each week.
Compressed hours	This is when an employee can work their weekly hours over fewer days e.g. nine day fortnight.
Homeworking or teleworking	This is where an employee will either spend all their time working from home or part of the working week.
Job sharing	This is where two employees will share the job role normally done by one person.
Shift-swapping or self-rostering	Employees agree to swap shifts between themselves and negotiate between colleagues when they need time off.

In England, Wales and Scotland, all employees who have at least 26 weeks' continuous service have the right to request flexible working, as long as they haven't already made a flexible working request within the last 12 months.

Employers must deal with the request in a 'reasonable manner' and can only refuse requests for specific reasons, including:

- Extra costs that will damage the business;
- The work can't be reorganised among other staff;
- People can't be recruited to do the work;
- Flexible working will affect quality and performance;
- The business won't be able to meet customer demand;
- There's a lack of work to do during the proposed working times;
- The business is planning changes to the workforce.

In Northern Ireland, a member of staff must be classified as an employee to request flexible working, have worked for the employer continuously for 26 weeks and have not made an application to work flexibly in the past 12 months. The employer must have a good business reason to reject the application.

UNISON's full bargaining guide on flexible working is available here:

<https://www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf>

However, the key points for utilising flexible working to close a gender pay gap are these:

- Press for the employer to provide as full a range of flexible working options as possible, including the minimum set of arrangements listed above;
- Make flexible working options available throughout the pay structure as far as possible to ensure that they are not terms isolated to low pay and so limit the ability of staff to progress up the pay spine if they have caring responsibilities;
- Adopt a programme to highlight flexible working options to men as much as among women to avoid a self-fulfilling assumption that caring roles will be fulfilled by women;

Other measures to consider when reviewing your flexible working policy are:

- Seek to waive any waiting period before new employees can request flexible working and make flexible working requests possible from day one of employment;
- Set up a network of flexible working champions, offering coaching and support for staff and managers;
- Encourage a culture focused on outputs not inputs and ensure flexible working is a team approach
- Monitor take-up of flexible working, including by gender and type of caring responsibility;
- Provide line managers with support and advice so they can support staff and feel comfortable with sensitive conversations;
- Change the onus to managers providing a business case for declining flexible working requests;
- Advertising and offering all jobs as having flexible working options, such as part-time work, remote working, job sharing or compressed hours;
- Encouraging senior leaders to role model working flexibly and to champion flexible working.

Measures to support women's health in the workplace

Every woman of working age will experience some health related, physical and/or psychological, implications of being a woman. This occurs across the life-cycle from periods to menopause, and includes common conditions such as fibroids, endometriosis, polycystic ovary syndrome and premenstrual syndrome, as well as those which inhibit the ability to become pregnant or carry to term. Being pregnant may cause a range of symptoms (such as extreme morning sickness), exacerbate symptoms of existing conditions (including where pregnancy inhibits the ability to manage an existing condition), or lead to the development of health conditions, including post-natal depression. Many of these conditions manifest in emotional stress, poorer psychological health (often depression), fatigue and pain, all of which are known to have considerable negative implications for work.

It is important that women's specific health concerns are understood and supported during their working life to avoid them also feeding into women's lack of progression.

The issues of women's reproductive and gynaecological health are marked by whispered conversations and euphemisms. However it is important for this to change and to create an environment where women can openly raise their health issues and expect them to be understood and taken seriously.

The Work Foundation has created a very helpful resource for understanding these issues and [guidance on potential workplace policies](#) that could be considered.

See also [UNISON's guidance on workplace menopause policy](#).

Checklist 4

- Review recruitment materials and practices to ensure there is no unconscious bias
- Review training options and materials to encourage take up by women and all carers
- Review the terms of maternity pay and leave arrangements with a view to improving the attractiveness of the package available to women
- Seek an equivalent improvement in the terms of shared parental leave and a publicity drive to improve take-up among men;
- Press for the employer to provide as full a range of flexible working options as possible;
- Make flexible working options available throughout the pay structure as far as possible to ensure that they are not terms isolated to low pay and so limit the ability of staff to progress up the pay spine if they have caring responsibilities;
- Adopt a programme to highlight flexible working options to men as much as among women to avoid a self-fulfilling assumption that caring roles will be fulfilled by women;
- Seek to waive any waiting period before new employees can request flexible working and make flexible working requests possible from day one of employment.
- Press for agreement on a carers' policy that permits paid and unpaid leave for any employee who cares for a family member who due to illness, disability, a mental health problem or an addiction needs their help to live independently.
- Review or implement a policy that directly supports women's health in the workplace that covers menopause and other important women's health issues.

Other measures to reduce the gender pay gap

Even after an organisation has adopted every measure to address the causes of the gender pay gap set out above, a stubborn differential can remain, since some of the societal roots of the gap are outside the control of an individual organisation.

Therefore, the measures set out below are not specifically targeted on female workers, but they are targeted on parts of the workforce where women commonly predominate and these measures may be among the most effective in reducing the scale of the gap, particularly if the supplementary pay gap data is confirming a large proportion of women are on part-time, zero hours or temporary low-paid contracts.

Measures to raise the income of low-paid staff

If the organisation is not already a Living Wage employer, gender pay gap reporting offers a useful opportunity to advance the case for adopting the rate as the minimum level of pay, ideally through accreditation by the Living Wage Foundation.

UNISON's guidance on bargaining for the Living Wage is set out in full at <https://www.unison.org.uk/content/uploads/2018/07/Living-Wage.pdf>

Because 27% of women are paid below the Living Wage compared to 16% of men, the Living Wage usually has a positive effect on the gender pay gap.

However, care should be taken that the Living Wage does not undermine pay structures which have been designed to deliver equal pay or compromise equal pay agreements, such as Single Status or Agenda for Change.

In some cases, the raising of lower ranked jobs to a higher pay rate could result in work of equal value being paid unequally. However, the resolution should lie in cascading benefits up the pay scale to ensure that higher rated jobs receive a simultaneous boost.

In some cases, it may not be possible to persuade an employer to adopt the Living Wage, but they may be prepared to concede a pay award that provides a higher raise for the lowest paid staff. These are often achieved by setting a flat rate increase for the lowest paid staff, since flat rates deliver higher percentage rises on lower incomes.

Measures to reduce use of insecure contracts and enforce parity

Gender pay gap reporting can provide an opportunity to mount a drive against the use of insecure forms of contract such as zero hours, fixed term and agency.

Though flexibility through working arrangements such as part-time contracts has been advanced earlier in this guide as a way of allowing women to remain in employment and progress up the pay scale, care should be taken that this does not tip over into contracts that are inferior terms to permanent arrangements.

Given that women make up 52% of the UK's casual workforce and 60% of the fixed term workforce⁴, a commitment to converting contracts to standard permanent terms will usually have a positive effect on the gender pay gap.

⁴ TUC, Living on the Edge, 2016

UNISON's guide for setting out the advantages of employing staff on secure terms is available here: <https://www.unison.org.uk/content/uploads/2017/05/Contract-types.pdf>

In addition to defending secure contracts, the gender pay gap will usually benefit from a commitment to ensure parity in terms between workers on permanent full-time contracts and those on part-time, fixed-term and agency work

In England, Scotland and Wales, the rights of part-time workers are protected under the [Part Time Workers \(Prevention of Less Favourable Treatment\) Regulations](#), while the same protections apply in Northern Ireland under [equivalent legislation](#).

Under these regulations, part time staff are guaranteed the same rate of pay as full time staff unless the employer can argue a justification on the basis that differentials achieve a "legitimate business objective."

In order to make a valid comparison with the rates enjoyed by a full time worker, the comparison will usually have to be with a full-timer on the same type of contract, carrying out the same or broadly same work and ideally working in the same establishment (though a different part of the same organisation can be valid).

The part-time worker regulations can cover a large range of employment arrangements, including casual, bank, homeworker, zero hours, term time and job sharing contracts, since they apply to workers as well as employees, with only the self employed lying outside the scope of the regulations.

Under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations in [England, Scotland and Wales](#), alongside fixed-term employee legislation in [Northern Ireland](#), temporary workers have to be treated no less favourably than similar permanent staff unless, again, the employer can provide an "objective justification."

The regulations define a fixed-term worker as someone "having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event."

The regulations apply to "employees" rather than "workers," while agency temps and apprentices are also excluded.

The terms and conditions that can be enforced are those of a permanent employee who does the same or similar work for the same employer in the same establishment (or in a different establishment if there is no permanent comparator in the same establishment).

However, unlike protections for part-time staff, the fixed-term regulations state that a "package approach" to comparing terms and conditions should be used rather than a term by term approach. This means that the entire employment package of a fixed-term employee can be compared with that of a permanent employee rather than comparing each individual aspect of their terms and conditions i.e. an inferior pay rate may be balanced against a superior holiday entitlement.

However, this does not stop branches from seeking an agreement from an employer that will provide equal terms and conditions on a term by term basis.

Under the [2010 Agency Workers Regulations](#), alongside equivalent legislation in [Northern Ireland](#), temporary agency workers are entitled to the same "basic" terms and conditions as if

they had been employed directly by an organisation once they have completed a 12-week qualifying period.

The comparable terms and conditions to be enforced after 12 weeks have to be those of an employee conducting the same or broadly similar work and working in the same workplace (where this condition can't be met, another workplace owned by the hirer can be used).

There is mounting evidence that women are more risk averse than men, particularly when it comes to marrying caring responsibilities with work. Caring responsibilities make it less likely that women will seek to change work routines or location for a temporary promotional or development opportunity. This can lead to a higher proportion of men applying for temporary opportunities as compared to women.

One example is where a 6-month opportunity is advertised, and a pregnant woman is about to go on 12 months of maternity leave – clearly she is unlikely to apply for this opportunity but may well want to apply for the permanent role. Short term opportunities are often seen as the stepping stone to longer term advancement and experience in the role is evidently an advantage when applying for any subsequent permanent role.

That these contracts are development opportunities should be recognised in deciding when and how to use fixed term or short-term contracts. Examples of the legitimate use of short-term contracts would include:

- Where the work is genuinely project based, time limited and outside the scope of the current staffing cohort
- Where long term funding has yet to be agreed or is external
- To cover long-term sickness

Where temporary contracts are used they should:

- Promote the use of flexible working and/or offer passported adjustments from substantive roles
- Be reviewed regularly and in good time to assess the need for any extension beyond the agreed term
- Extended only after full assessment of whether the post could now be made permanent
- Ensure that any extensions are consulted on and that there is a robust process for applying to extend with a clear plan for avoiding further extensions.
- Be re-advertised if expected to extend beyond an agreed period

It is important to regularly monitor applications to assess any clear differences between men and women in applying for short term/fixed contracts against permanent opportunities and review procedures if the data shows a gender imbalance.

Measures to influence contracting out

Contracting out shows a marked tendency to focus on low-paid employment where women are disproportionately represented, therefore it can be valuable for gender pay gap reporting to act as a cue for examining how an organisation handles its consideration of equality on the procurement process.

The general Public Sector Equality Duties require public sector bodies to ensure that the duties are applied to outsourced staff. In Scotland, the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 is rather more prescriptive in requiring devolved authorities to have “due regard to whether the award criteria should include considerations to enable it to better perform the equality duty.”⁵

Therefore, although not a legal requirement, branches should press public sector employers to specify in their procurement policy that any organisation subject to the gender pay gap reporting regulations should submit their gender pay gap report as part of bidding documents and its policy on ensuring gender equality will form part of the consideration given to working practices in award criteria.

For UNISON’s full set of guidance on procurement, go to this link
<https://www.unison.org.uk/get-help/knowledge/contracts/procurement/>

Checklist 5

- If the organisation is not already a Living Wage employer, advance the case for adopting the rate as the minimum level of pay, ideally through accreditation by the Living Wage Foundation.
- Mount a drive against the use of insecure forms of contract such as zero hours, fixed term and agency, where women are often disproportionately represented.
- Obtain a commitment to review the terms of part-time, fixed-term and agency workers to ensure parity with workers on permanent full-time contracts is being observed
- Press public sector employers to specify in their procurement policy that any organisation subject to the gender pay gap reporting regulations should submit their gender pay gap report as part of bidding documents and its policy on ensuring gender equality will form part of the consideration given to working practices in award criteria.

⁵ This applies where a contracting authority falls under the jurisdiction of the Public Contracts (Scotland) Regulations 2012, and it is contracting on the basis of an offer which is the most economically advantageous.

Appendix 1 – Letter to initiate discussions through HR



Branch name and address

Date

GENDER PAY GAP REPORTING

Dear **[Name of appropriate senior HR manager]**,

Following publication of **[organisation]’s** gender pay gap report, the staff side unions are writing to propose a meeting with HR to discuss how this information can be utilised to identify causes of the pay gap and develop actions to tackle gender pay inequality,

Include the following paragraph if it boosts your case but submit this letter regardless of how employer’s results compare to averages:

We note that **[organisation]’s** results show a more serious pay gap than **national, local sectoral averages [delete category as appropriate and quote suitable example if possible]**.

We believe that there is a moral duty to ensure the maximum equality for staff, but we would also point out the importance of taking gender pay reporting seriously in terms of its impact on:

- Increased productivity and financial returns for employers that promote equality and diversity;
- Reducing the need for equal pay claims, with all their associated costs;
- Drawing more effectively on the full talents of the entire workforce;
- Generating a more diverse workforce better attuned to the needs of all service users;
- Attracting and retaining the best candidates for fulfilling roles in the organisation
- Developing a more productive, loyal and motivated workforce, with the consequent benefits of reduced staff turnover and absenteeism

In order to take this work forward, we propose that a joint working group should be established, involving a fair representation of both employer and union representatives.

We suggest that the brief for this working group should include identifying any supplementary measures needed to effectively identify the causes of the gap, exploring the

current pay structure, looking at whether any policies may be discouraging women from taking up higher paid roles, and considering improvements that can be made in the terms of low-paid staff where women's employment is often concentrated.

We look forward to working constructively together to bridge the gender pay gap.

Yours sincerely

(Your name and UNISON position)

Appendix 2 – NHS England case study

This case study sets out how a major UK public sector employer, working jointly with trade unions, set out an action plan and developed work strands aimed at tackling their gap using many of the steps set out in this guide. It seeks to offer an example that branches can borrow from in the process of moving from publication of the basic data, to developing further analysis that could help identify causes of the gap, and finally establishing actions designed to tackle the gap.

Pay gap findings

In 2018, NHS England published its first gender pay gap report, showing the information required by legislation for the snapshot date of 31 March 2017.

The results showed that the organisation's mean and median gender pay gaps were almost identical at 21.2% and 21.5% respectively.

Suggested joint working

These findings were brought to the next meeting of the of the National Partnership Forum, a joint staff side and management side forum.

There was broad agreement that the gap seemed quite high for an organisation whose workforce is composed largely of high-level administrative roles and above. It was quickly suggested that working to close this gap should be recognised as important work that could be done in partnership as a joint project.

UNISON suggested a 'Task and Finish' group was set up to work on an action plan and report back to the National Partnership Forum at key stages.

Team composition

It was agreed that this was priority work and that it required high level decision makers and influencers to be involved to ensure success.

The first meeting was set up relatively swiftly with the aim of agreeing the terms of reference. However, despite senior policy makers being in attendance (including the head of Equality and Inclusion) it became apparent that the proposed team were all women.

This was highlighted as a potential risk. The gender pay gap should not be seen as a women's issue, for women to resolve. It was agreed that to ensure this was not seen as a simple tick-box exercise, and in recognition that the data showed significant regional variations, the group would reconvene with a better gender and geographical balance on both sides.

Further analysis

One of the first tasks was to better understand the possible drivers for the pay gap within NHS England. To that end, some work was done by the employer on digging into the data and bringing relevant breakdown reports to the first meeting. These indicated several areas where gaps appeared bigger and which were worth looking at in more detail.

On the basis of those findings, the working group recognised that there were several potential areas worth exploring further as specific work strands. These areas included the impact of carers' responsibilities and significant regional variations in the gap. A particular problem was identified in the middle to lower management grades whereby the pay of women in their forties dipped and did not recover.

From this deeper look at the data, a detailed work plan was drawn up with agreed priority areas, scheduled meetings and timeframes established.

Action plan

When publishing the annual pay gap data it is expected that the organisation then discloses its plan for addressing any gap. This is an opportunity for the employer to demonstrate that it considers this to be important priority work.

From the preliminary work of the joint working group an agreed action plan was drawn up and published as follows:

Recruitment and Remuneration

"We will use data to explore progression rates, better understand the drivers of the pay gap, and to develop our pay strategy using analysis of new starter data to ensure salary decisions on appointment, meet our equality and diversity standards. We will review how we attract more women into roles such as National Clinical Directors which are currently mostly male."

Flexible Working

"NHS England has a flexible working policy, which will be refreshed as an opportunity to influence organisational culture and thinking. Flexible working opportunities will be actively promoted to existing and prospective employees. Plus, we will promote and encourage the take up of shared parental leave."

Coaching and Mentoring

"We will expand the number of interventions on offer to support the talent development of women in the workplace, including targeted mentoring and coaching programmes. NHS England will build talent plans at a regional and national level to tackle occupational segregation, fully reflecting our commitment to address gender representation across the organisation."

"Our women's staff network, in partnership with other NHS England staff networks, will assist in the shaping and delivery of our projects to improve experience and achieve our goals."

Ownership

It was recognised at an early stage that the terms of reference needed to include specific expectations about ownership of actions. Any actions agreed would have a named owner who would have responsibility for progressing the issue and reporting progress.

Identify current practice

One early understanding was that assumptions were being made about what equality measures were already in place. Some basic measures were assumed to be happening (such as anonymous applications at short-listing stage) which turned out not to be embedded at all.

Detailed work

Any area that looked like it might be a factor in the pay gap was explored further. For example, analysis of the gap by pay band confirmed a marked tendency for the gap to grow with steps up the bands, alongside a tendency of the proportion of female employees to drop.

This was discussed in the joint group where it was decided that this should be a 'priority 1' issue to explore. Further work was agreed and discussed, research was undertaken, workshops and focus groups pulled together and a set of proposals emerged. This included the potential importance of introducing a 'returners' programme to encourage women who due to caring commitments have fallen out of work (or into work where they are over-qualified), to feel comfortable returning to appropriate levels after a period of absence.

The group explored policies used in other workplaces and drew up its own draft policy to fit the organisation's needs.

Other proposed actions included:

- Analysis of talent profiles and deep dive in to barriers preventing progression;
- Explore skills-based assessment tasks in recruitment;
- Encourage the uptake of Shared Parental Leave;
- Diverse selection panels.

Taking actions forward

One of the centrepieces of NHS England's action plan has been to refresh its whole approach to flexible working.

To that end, it developed a "roadmap" built around the concept that organisational policies on flexibility can be at one of three distinct stages: 'limited', 'basic' or 'embedded', and agreed how policies might progress from one stage to another in various arenas. See table below.

Roadmap to embedded flexibility

Stage	Description / characteristics
Limited	<p>This is consistent with the 'avoidance' or 'compliance approach'.</p> <p>No recognition of how effective flexible work and family-friendly policies / practices can promote gender equality and diversity.</p> <p>Flexible work and family-friendly policies / practices only exist to the extent they are required by legislation or regulation.</p>
Basic	<p>This is consistent with a 'programmatic' approach.</p> <p>Flexible work and family-friendly policies / practices are provided to meet the needs of specific groups or individuals.</p>
Embedded	<p>This is a 'strategic', 'integrated' and 'sustainable' approach. Enabling progression as flexibility becomes strategic in the mindset, systems and culture.</p> <p>Flexible work and family-friendly policies / practices are designed and accessible to benefit all employees; the flexibility business case is established.</p> <p>Flexible work and family-friendly policies / practices are leveraged as a business enabler; no value judgements are made about flexibility needs.</p> <p>Flexible, family-friendly working is expected, normalised and equitably accessible; it is integral to all business and people practices (e.g. workforce planning).</p> <p>The flexibility strategy is aligned to the business strategy and the organisation is moving towards the workplace of the future.</p>

Implementing change and reviewing impact

The working group is nearly one year into the process and the next reporting deadline is at the end of March 2019. Whilst it has to be recognised that the process will take time to embed and for change to register, some early changes have already been introduced. For example, the availability and support of flexible working from day one of employment is now promoted in all recruitment materials.

Other areas are still being finalised and are about to roll out but there will be a continuous review and appraising function for the wider Partnership Forum at each stage of the process and key review milestones will be agreed going forward.

